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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,138	09/16/2003	Kenichi Kitayama	HONZ 2 00012	3991

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Erik J. Overberger, Esq.
Fay, Sharpe, Fagan, Minnich & McKee, LLP
7th Floor
1100 Superior Avenue
Cleveland, OH 44114-2518

EXAMINER

ENGLE, PATRICIA LYNN

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/663,138

Applicant(s)

KITAYAMA ET AL.

Examiner

Patricia L Engle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-10, 14, 17, 20 and 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Komatsu et al. (US Patent 6,776,449, which was published as WO02/072373 on September 19, 2002).

Regarding claim 1, Komatsu et al. disclose a tailgate assembly comprising a metal frame (3) having a reinforced cross-sectional shape (Fig. 1) with an inner side (side facing 6 in Fig. 1) facing an associated vehicle's load-carrying bed and an outer side (side facing 2 in Fig. 1) opposite the inner side; and a skin (2) attached to the outer side of the frame. Regarding the limitation that the frame is a stamped sheet metal frame, MPEP 2113 Product-by-Process Claims states that "If the product in the product-by-process claim is that same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process." The tailgate assembly is anticipated by Komatsu et al. The process by which the frame of the tailgate assembly is made is not a patentable distinction.

Regarding claim 13, Komatsu et al. discloses a vehicle closure structure comprising: a frame having a double-hat shape (3) including a raised section (10) and an inner flange and an outer flange (Fig. 4) flanking the raised section; a sheet molding compound structural cladding

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(4) adjacent and connected to the raised section (Fig. 3) of the frame (3); and a skin (2) adjacent and connected to the outer flange of the frame (3- Fig. 4).

Regarding claim 2, Komatsu et al. disclose the tailgate assembly of claim 1 further including: a structural cladding (4) attached to the inner side the frame.

Regarding claim 4, Komatsu et al. discloses the tailgate assembly of claim 2 wherein the structural cladding (4) formed of sheet molding compound (column 8, line 53) which enables the cladding to be relatively lightweight.

Regarding claim 5, Komatsu et al. disclose the tailgate assembly of claim 1 wherein the frame (3) having a reinforced cross-sectional shape includes a raised section (10) extending around an area adjacent a perimeter of the frame for increasing the stiffness of the frame and resisting bending of the frame when a load is applied thereto.

Regarding claim 6, Komatsu et al. disclose the tailgate assembly claim 5 wherein the frame (3) further includes a peripheral flange (Fig. 4) located between the raised section (10) and the perimeter of the frame.

Regarding claims 7 and 8, Komatsu et al. disclose the tailgate assembly of claim 6 wherein the skin (2) is attached to the peripheral flange (Fig. 4). MPEP 2113 Product-by-Process Claims states that "If the product in the product-by-process claim is that same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process." The skin being connected to the frame is anticipated by Komatsu et al. The process by which the skin and the frame are joined is not a patentable distinction.

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Regarding claim 9, Komatsu et al. disclose the tailgate assembly of claim 2 further including: a cap (6) connected cladding (4) and skin along a top side of the frame (3- the cap (6) joins the cladding and the skin along a top side (an upper portion) of the frame (3)).

Regarding claim 10, Komatsu et al. disclose the tailgate assembly of claim wherein the frame includes a reinforcing rib (12) adjacent at least one edge (10A) of the frame.

Regarding claim 17, Komatsu et al. disclose the vehicle closure structure of claim 13 further including: at least one stiffener (12) connected to the frame reinforcing for the frame.

Regarding claim 14, Komatsu et al. disclose the vehicle closure of claim 13, further including: a control mechanism (5) connected to the inner flange of the frame for operating and disabling associated locks and hinges of the tailgate.

Regarding claim 20, Komatsu et al. disclose the tailgate assembly of claim 1, wherein the stamped sheet metal frame (3) is an integral structure formed from a single sheet.

Regarding claim 21, Komatsu et al. disclose the tailgate assembly of claim 1, wherein the stamped sheet metal frame (3) substantially forms a tailgate structure and defines a size of the tailgate structure.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 11, 12, 3, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komatsu et al.

Komatsu et al. disclose the tailgate assembly of claim 10.

Komatsu et al. do not disclose that the rib extends along each perimeter edge.

Komatsu et al. disclose that the parts are formed by pressing. It would have been obvious to one of ordinary skill in the art to make the frame as a one piece member formed by stamping and to include a rib along the entire perimeter of the frame (claims 11 and 12). The motivation would have been to reinforce the entire perimeter or to provide specific failure locations.

Regarding claims 3, 15 and 16, Komatsu et al. disclose the tailgate assembly of claim 2. Kaomatsu et al. do not disclose that the structural cladding includes a corrugated section to provide torsional and bending resistance. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a corrugated section on the cladding (4). The motivation would have been to increase the rigidity of the cladding.

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ojanen in view of Smith (US Patent 2,806,735).

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Komatsu et al. disclose the tailgate of claims 1-13 and 15-17.

Komatsu et al. do not disclose that the tailgate pivots about a horizontal and vertical axis.

Smith discloses a tailgate which pivots about a horizontal axis and a vertical axis.

Komatsu et al. and Harper are analogous art because they are from the same field of endeavor, i.e., tailgates.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to allow the tailgate to pivot about a horizontal axis or a vertical axis.

The motivation would have been to give the truck operator greater versatility in loading and unloading the truck bed.

Therefore, it would have been obvious to combine Smith with Komatsu et al. to obtain the invention as specified in claim 19.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Komatsu et al. in view of Seksaria et al. (US Patent 6,672,642 filed on June 11, 2002).

Komatsu et al. disclose the tailgate of claims 1-13 and 15-17.

Komatsu et al. do not disclose stiffeners adjacent the corners of the frame with an associated hinge attached thereto.

Seksaria et al. disclose a tailgate with a stiffener (94,95) attached to the corner of the frame with an associated hinge (101) attached thereto.

Komatsu et al. and Seksaria et al. are analogous art because they are from the same field of endeavor, i.e., tailgates.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to include a stiffener at the corner with a hinge member attached thereto.

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The motivation would have been to at reinforcement at a high load location of the tailgate.

Therefore, it would have been obvious to combine Seskaria et al. with Komatsu et al. to obtain the invention as specified in claim 18.

Response to Arguments

8. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

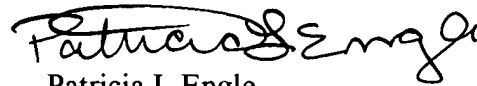
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art discloses other tailgates with reinforcements.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L Engle whose telephone number is (703) 306-5777. The examiner can normally be reached on Monday - Friday from 8:00 to 4:30. After April 5, 2005, the Examiner can be reached at (571) 272-6660.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patricia L Engle
Primary Examiner
Art Unit 3612

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February 14, 2005